

FEB 21 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

BYRON VILLEGAS, aka Juan Carlos
Gonzalez,

Defendant - Appellant.

No. 05-50175

D.C. No. CR-04-00137-MMM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Argued & Submitted February 7, 2006
Pasadena, California

Before: THOMPSON, T.G. NELSON, and GOULD, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Byron Villegas, a.k.a. Juan Carlos Gonzalez, appeals the district court's denial of his motion to suppress his "identity evidence."¹ We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742 and affirm the denial of Villegas's motion to suppress.

We review the district court's denial of a motion to suppress evidence de novo, but review its underlying factual findings for clear error. *See United States v. Summers*, 268 F.3d 683, 686 (9th Cir. 2001). We review the district court's determination of probable cause de novo. *See United States v. Nava*, 363 F.3d 942, 944 (9th Cir. 2004).

Villegas contends that the district court improperly denied his motion to suppress his "identity evidence" obtained as a result of his arrest because the government did not have probable cause to arrest him. The district court found that there was probable cause to arrest Villegas based on Special Agent Frank Aimaro's sealed *in camera* declaration, his testimony at an *in camera* hearing in which he described the confidential source's reliability and detailed information the source had provided. The district court summarized and commented upon the

¹ Villegas's identity evidence includes his identity, fingerprints, INS forms, and "other identification materials." In its opposition to Villegas's motion to suppress, the government stated that it did not intend to introduce in its case-in-chief any statements made by Villegas to law enforcement officers.

in camera declaration and hearing in an *in camera* minute order which was also sealed.

We deny Villegas's motion to unseal the sealed district court documents. To unseal them would necessarily disclose the confidential source's identity, which we decline to do. *See United States v. Anderson*, 509 F.2d 724, 730 (9th Cir. 1974). However, we have carefully reviewed Aimaro's sealed *in camera* declaration, the district court's sealed *in camera* supplemental minute order describing Aimaro's testimony at the *in camera* hearing, and the sealed transcript of that *in camera* hearing. Based on our review of these sealed materials, as well as the rest of the record in this case, we conclude there was probable cause for Villegas's arrest. *See United States v. Bishop*, 264 F.3d 919, 924 (9th Cir. 2001). Accordingly, we affirm the district court's denial of Villegas's motion to suppress.

We remand to the district court, however, with instructions to it to correct the judgment to exclude the reference to 8 U.S.C. § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000); *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000).

AFFIRMED; REMANDED WITH INSTRUCTIONS.